Court No. 2

In the High Court of Uttaranchal at Nainital.

Appeal against Order No. 107 of 2003.

Oriental Insurance Company Ltd.,
through its Divisional Manager,
Nainital Road, Bhotia Parao,
Haldwani, (Nainital), ... Opp.Party / Appellant.

Versus

Smt. Chhuma Devi W/o late Matbar Singh Negi
and six others, R/o Village-Balma,
Patti-Sarjuila, District-Tehri Garhwal
..... Claimants/Respondents

Sri Vijai Singh Negi S/o Sri Kushal Singh Negi,
Owner of the Vehicle,
R/o Village-Nehri Gram, District-Dehradun.
..... Opp.party/Respondent

For appellant-Sri Tanveer Alam Khan Advocate,
For the respondent/claimants-Sri Rakesh Thapliyal Advocat.

Dated: 23rd Aug., 2004

Hon'ble P.C. Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellant Insurance Company against the judgment and order dated 06.03.2003 passed by the Motor Accident Claims Tribunal/District Judge, Tehri Garhwal *(hereinafter referred to as the Tribunal)* in Motor Accident Claim Petition No.18 of 2000, whereby the claim petition of the claimants has been allowed for grant of compensation amounting to Rs. 4,10,000/- against the Insurance Company.

2- Brief facts giving rise to this appeal are that deceased Matber Singh was travelling in vehicle No. UP 07F/4135 from Dehradun to Rishikesh. Due to rash and negligent driving of the said vehicle by its driver it dashed with a tree 4 Kms. away from Rishikesh resulting the death

of Matber Singh on the spot. The deceased was the employee of Nagar Palika, Tehri and he was getting salary of Rs. 5000/- per month.

3- The Opp.party No.1-owner of the vehicle did not contest the case despite service before the Tribunal. The Opp.party No.2- Oriental Insurance Company filed its written statement denying the allegations of the petition and pleaded that the driver of the vehicle was not having a valid driving licence and was driving the vehicle without valid permit, registration, fitness and other certificates in violation of the conditions of the policy. The learned Tribunal framed issues on the pleadings of the parties and decided the same in favour of the claimants and allowed the claim petition accordingly. Feeling aggrieved, the Oriental Insurance Company has come up in the appeal.

4- The learned counsel for the appellant challenged the appeal on the grounds, firstly, that the owner of the vehicle did not contest the case and did not file any documentary evidence regarding permit and driving licence of the vehicle concerned. The learned Tribunal erred in not considering this aspect. Secondly, that the multiplier has wrongly been applied in this case.

5. We have gone through the impugned judgment. The Tribunal while deciding issue No.1 held that in the evidence it has been proved that on the aforesaid date, time and place the accident did occur in which the deceased died. On issue No.2 which is regarding insurance of the offending vehicle with the Insurance Company it has been held on the basis of documentary evidence that the offending vehicle No. UP 07 F /4135 was insured with the Oriental Insurance Company on the date of accident. The issue No.3 was framed to the effect that whether the driver of the vehicle in question was not holding a valid driving

licence on the date of accident. The learned tribunal while decdiding this issue gave its finding that the issue has been raised by the Insurance Company but the owner of the offending vehicle could be able to say whether the driver of the vehicle in question was having a valid driving licence on the ill-fated day. Since despite service the owner of the offending vehicle did not appear to contest the case, therefore it was the duty of Insurance Company to discharge its burden which it has apparently not done. Hence it gives no adverse affect. In view of this clear cut finding of the Tribunal, it does not lie in the mouth of the appellant to reiterate the matter before this Court and even then on this count also, the Insurance Company cannot be absolved from its liability to pay the compensation.

7- Following the ratio of the pronouncement of the Apex Court in the case ***National Insurance Company Limited Versus Swaran Singh and other [2004 (3), S.C.C., 297]*** we are of the opinion that the Insurance Company must first satisfy the award before the learned Tribunal and then can file its objections, if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured by that court/tribunal in accordance with the provisions of the Act.

8- On the second ground of challenge the learned counsel for the appellant conteded that the Tribunal calculated the income of dependency applying the multiplier of '10' which is wrong. It is undisputed that the deceased was getting basic salary of Rs. 3875/- which the Tribunal has rightly held that this amount of basic salary would certainly be to the extent of Rs. 5000/- in all including other allowances. P.W.2 Sampat Lal Shah has also corroborated this fact in his statement on oath. It is

also evident from the salary certificate that the deceased was employee of Nagar Palika Tehri and he was due for retirement on 30.4.2002 while the accident occurred on 28.8.1999 in which the deceased died. So it is clear from the said evidence that the deceased was above 55 and below 58 years of age. We find force in the said contention of learned counsel for the appellant. The multiplier of **'8'** should have been applied in this case in the facts and circumstances of the case and on the basis of evidence on record. The finding given on this issue by the learned Tribunal is interfered to this extent only. After deducting one-third from the total income of Rs. 60,000/- per annum the amount comes Rs. 40,000/- per annum and applying the multiplier of **'8'** according to multiplier provided in the second Schedule appended to Sec.163-A of the Motor Vehicles Act, the loss of dependency comes to Rs.40,000X8= Rs.3,20,000/-. The learned Tribunal further rightly allowed Rs. 10,000/- in the count of loss of consortium, loss of estate and also funeral expenses to the claimants. Hence the total amount of compensation payable to the claimants comes to Rs. 3,30,000/-.

9- The appeal is partly allowed. The claimants shall be paid Rs.3,30,000/- (Rupees three lac thirty thousand) alongwith interest at the rate of 6% (six per cent) per annum from the date of filing of the petition till the date of payment by Opp.party No.2-Oriental Insurance Company. The impugned order dated 06.03.2003 is modified accordingly. There shall be no order as to costs. The amount deposited by the appellant in this appeal shalls be remitted to the Motor Accident Claims Tribunal concerned within a peruiod of two months from today.

(B.S.Verma, J.) **(P.C. Verma, J.)**

P.Singh